NG KHIM YEOW & ANOR. v. REG.

[A. Cr. J. (Rose C.J.) October 28, 1959]

[Singapore — Magistrate's Appeal Nos. 135 & 146 of 1959]

Criminal Procedure — Trial — Joint trial — Adjournment of case against co-accused after conclusion of case against 1st accused — Absence of first accused or his counsel from adjourned hearing — Whether defect curable by section 440 of the Criminal Procedure Code (Cap. 132).

In this case the two appellants were jointly tried on a charge of extortion. The case against the 1st appellant was concluded on June 18, 1959. The case against the second appellant was adjourned to July 1. On the latter date further evidence was adduced. Neither the 1st appellant nor his counsel was present on the adjourned hearing.

Held: (1) the procedure followed amounted to a fundamental defect in the proceedings;

(2) In the circumstances it would not be an appropriate case for invoking the provisions of section 440 of the Criminal Procedure Code.

MAGISTRATE'S APPEAL.

T. T. Rajah for the appellants.

F. Seow (Crown Counsel) for the respondent.

Rose C.J.: The two appellants were originally charged with theft in a dwelling house contra section 380 of the Penal Code, but at a late stage of the proceedings the charge was amended to one of putting the complainant in fear of death "in order to the committing of extortion" contra section 387 of the Code.

The facts of the case which are stated in the Grounds of Decision of the learned District Judge are unusual and there were certain omissions in the prosecution case which would seem to invite comment, for example, the omission to produce the original demand note which was a vital element in the extortion story. The point, however, that causes me the most concern is that while the two appellants were jointly tried it appears from the record — and I am informed from the Bar that the procedure followed was in fact correctly set out in the record — that the case against the first appellant was concluded on the 18th of June 1959, learned Counsel for the first appellant having made his final address to the Court on that date, while the case against the second appellant was adjourned to the 1st of July.

On the latter date further evidence was adduced running to some six pages of typewritten record and subsequently learned counsel for the second appellant made his final address to the Court.

Learned counsel for the first appellant was not present at this adjourned hearing and there is nothing on the record to indicate that the first appellant himself was there, nor is it suggested by the learned Deputy Public Prosecutor that I should assume that he was. This procedure seems to me to amount to a fundamental defect in the proceedings.

In the light of such a marked departure from normal practice, I am not prepared to speculate as to whether the result of the trial would have been the same had the correct procedure been followed. In the circumstances, this would not seem to be an appropriate case for invoking the provisions of section 440 of the Criminal Procedure Code.

The appeal must therefore be allowed in the case of both appellants, and their convictions are set aside.

Appeal allowed.

E'SINGAM v. DR. SUNDRAM & ORS.

[O. C. J. (Adams J.) March 18, 1960]

[K. L. — Originating Motion No. 6 of 1957]

Practice — Interlocutory injunction — Issue only in pending suits — Originating summons not appropriate form of procedure in such matter, R.S.C. 1957, O.50 r.6.

Notice of Motion — Inability of Court to decide other issues in.

This was an application by way of interlocutory injunction, *inter alia*, to declare that the Annual General Meeting of the Football Association of Selangor was *ultra vires* the rules of the association and therefore void and of no effect.

Held: the question at issue being one of fact, it had to be determined in open court and was not suitable for determination by the procedure of originating summons.

Cases referred to:—

(1) *Foon Seong* v. *Chan San Choon* [1947] M.L.J. 85.

(2) *Choo Yin Loo & Ors.* v. *Registrar of Societies, F.M. & Ors.*, [1957] M.L.J. 228.

(3) *Dawkins* v. *Antrobus* (1881), 17 Ch. D. 615.

(4) *Thelluson* v. *Viscount Valencia* [1906] 1 Ch. 480.

APPLICATION for Interim Injunction.

C. C. Rasa Ratnam for the applicant.

R. R. Chelliah for the respondents.

Adams J.: This was an Originating Motion in which the Plaintiff sought the following reliefs:

(a) to issue an order for an Interim Injunction upon the respondents restraining the respondents and the Football Association of Selangor and its Council from acting, officiating and or doing the work and other duties for and on behalf of the Football Association of Selangor and its Council and to refrain them from expending the moneys of the Association.

(b) to direct and order Mr. G. Preston, the Chairman of the Sub-Committee of the Council of the Football Association of Selangor 1959, to convene with due notice another Annual General Meeting of the members of the Football Association of Selangor, at Kuala Lumpur, confined to and limited only, to those members so affiliated and so either registered or exempted in accordance with and in conformity with Rule 12 (a) and 12 (b) of the Rules of the said Association.